19L4. **K** **File No.** O. Sugar control / 44

Legal Dept.

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Subject:— Opinions under the Sugar (Temporary Excise Duty) Ordinance 1943

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Submitted.

The Sugar (Temporary Excise Duty) Ordinance,1943, came into force with effect from 10-11-1943. From the letter of the Addl. Director of Civil Supplies, Bombay, No. 310-III, dated 2-12-43, addressid to the Jt. Secretary. F.D.(Central Revenues), it transpires that though the Ordinance came into force immediately with effect from 10-11-43, no official intimation regarding the increase in the ex-factory price of Sugar by 0-13- 0, per maund was received by this Govt. After ascertaining the correctness of the reports in the newspapers from the Collr. of Central Excise and Salt Revenue, Bombay, steps were taken to revise the ~~the~~ wholesale and retail prices of Sugar in the City of Bombay and the Bombay Suburban District, but it was not possible to issue order increasing the wholesale and retail prices of sugar in these areas tillx late in the evening of 11th Nov.1943. The result was that the revised price were actually given effect to from 12-11-43, in the City of Bombay and B.S.D. Steps were, however taken to furnish to the Central Excise Staff the particulars regarding the stocks of sugar as existing on 10-11-43. As, however, on the 10 or 11th November 1943, sugar was sold in the City of Bombay and B.S.D. at the old rates, this Govt. requested the Govt. of India to amend their orders and to levy the Excise Duty at the rate of 0-13-0 per maund on the stocks of sugar as found on <u>12-11-43</u>,(date on which revised prices came into force) instead of on stocks found on <u>10-11-43</u>. Govt. of India, however, state that such a course would entail adoption of different dates in different parts of the country as would lead to numerious administrative difficulties. They further remark that since the Indian Sale of Goods Act,1930, provides for measure of relief insuch cases they are unable to agree to the proposal. In para 3, of the F.D.(Supply note ~~date~~ dated 3-1-44 it is stated that by 'relief' under the Indian Sale of Goods Act, 1939, the Govt. of India presumably mean that that the party selling the goods is entitled to claim "reasonable price" for the goods sold but as in this case the prices have been controlled by Govt. and as the <u>old rates</u> were

P.T.O.

ruling on the 10th,11th November 1943, no relief can be sought under that Act. The R.L.A., is requested to advise whether the view expressed in para. 3 of the F.D.(Supply) office note is correct.

2. Under section 4 of the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract of sale the ~~pre~~ may be obsolute or conditional. Where under a contract of sale ~~the~~ property in the goods is transferred from the Sellr to the Buyer, the contract is called a sale, but where the transffer of the property in the goods is to take place at ax future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. Under section 5(1) a contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payments of the price of both, or for the delivery or payment or both shall be postponed. Under Sub-section(2), subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth or may be implied from the contract of the parties. Section 9 provides for ascertainment of price while section 10 provides for price to be fixed by valuation of a third party. Section 10 will have no application to the facts of the present case, and the only provision to be considered is section 9. Sub-section(1) of section 9 provides that the price in a contract of sale sale may be fixed by the contract or may be kept to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. Under sub-section(2), where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question ~~section 2(10) means the money consideration for sale of goods.--It may~~ of fact dependent on the circumstances of each particular case. 'price' is defined in section 2(10) means the money consideration for sale of goods. It may be money actually paid or promised. In order that a contract may be a contract of sale it is essential that it should provide for the the payment of a money consideration for the goods. Section 9 suggests the following methods of fixing the price-

(i) The price may be expressly Stated in the contract;

(i) The price may be expressly Stated in the contradt;

(ii) The contract may provide for the manner in which the price ~~price~~ is to be fixed. The agreement may be to pay as much for the goods as others pay.

(iii) the price may be determined by the course of deling between the parties; and

(iv) Where no price has been fixed, a reasonable price is implied

In a contract for sale of goods, if between the making of the contract and delivery of the goods custom or excise duty is increased the seller is entitled to claim the excess duty imposed from the buyer, provided he proves that such excess duty on goods tendered as has been already paid. It is immaterial whether such duty has been paid by the seller himself or some one else has paid it (Jamnadas Jodharam Vs. Trathdas, A.L.R.(1933) Sind P.404). In the absence of an agreement to the contrary, where inx the interval between the making of a constraft and delivery under it, there is an alteration in duty, the price may be correspondingly added to or reduced(52 cal. 644). If the wholesale dealers pay the excise duty on the 10th,11th they would be entitled to claim the excess duty. But from paras 1 and 2 of Mr. Bedekar's note it appears that duty under section 3 of the Ordinance was not paid befofe 11th Oct. 1943. that being so, the ruling in A.I.R.(1933) Sind 404,would not apply. Even if it did apply, as stated by F.D.(Supply), as the price of Sugar was controlled and no revised rates were sanctioned, they could not charge on 10th,11th price higher than the controlled rate. The view expressed in para 3. of F.D.(Supply) note appearse to be correct.

Sd/- E.P.Bhamgara.

18/1/

Office of the R.L.A.

Seen and Returned.

The view taken in paragraph 3 of F.D.(Supply) note dated the 3rd January 1944 at p. 43 is correct.

Sd/-R.S.M.

for R.L.A.

U.R. to F.D.(Supply) No.539 dated 21-1-1944.

M.R.D.
9-7-56

Office of the R.L.A.

"Wholesale dealer" as defined in section 2(e) of the Suguar (Temporary Excise Duty) Ordinance,1943 means any person whc buys or sells sugar wholesale and includes etc. Consequently a merchant who purchases sugar wholesale though for the purpose of retailing it is a wholesale dealer within the meaning of section 2(e) of the Ordinance. The view taken by the Collector of Central Excise is correct. The definition of wholesale dealer in the Ordiance includes persons usually regared as retail dealers.

Sd/-P.N.M.
24-2-44
Remembrancer of Legal Affairs.

M.R.D.
9-7-56
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U.R. to F.D.(Supply) No. 1445 dated 24th February 1944.